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LAW REFORM COMMISSION OF BRITISH COLUMBIA

ANNUAL REPORT

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The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

The Commissioners are:

ARTHUR L. CLOSE, *Chairman*

HON. RONALD I. CHEFFINS, Q.C., *Vice-Chairman*

MARY V. NEWBURY

LYMAN R. ROBINSON, Q.C.

PETER T. BURNS, Q.C.

Thomas G. Anderson is Counsel to the Commission.

Linda Reid is Legal Research Officer to the Commission.

Sharon St. Michael is Secretary to the Commission.

Linda Grant provides text processing and technical copy preparation.

The Commission offices are located at Suite 601, Chancery Place, 865 Hornby St., Vancouver, B.C. V6Z 2G3.

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TO THE HONOURABLE S.D. SMITH, Q.C.
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA

The Law Reform Commission of British Columbia has the honour to present its *Annual Report* for 1988/89. It outlines the progress made by the Commission during the period from April 1, 1988 to March 31, 1989.

I INTRODUCTION

The Law Reform Commission of British Columbia was created by the *Law Reform Commission Act*, S.B.C. 1969, c. 14 and it commenced operation in 1970. The function of the Commission is set out in section 2 of the Act:

> The commission is to take and keep under review all the law of the Province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....

The Commission's approach to this mandate has been described in its previous Annual Reports.

During the period under review, eight Reports were submitted to you on the following matters:

Deeds and Seals

Set-off

Co-ownership of Land

The Land (Settled Estate) Act

Practice in relation to the Cancellation of a Certificate of Lis Pendens

Response to the Report of the Justice Reform Committee

Wills and Changed Circumstances

Floating Charges on Land

In the past year, progress was also made on a number of other projects on the Commission's program, as these were brought closer to completion.

1988 was something of a landmark year in that we submitted the Law Reform Commission's one hundredth Report. 1989 will also be significant as it will mark the twentieth anniversary of the enactment of the *Law Reform Commission Act*.

II PERSONALIA

As presently constituted the Commission consists of five members: Arthur L. Close, Chairman; Hon. Ronald I. Cheffins, Q.C., Vice-Chairman; and Miss Mary Newbury, Professor Lyman R. Robinson, Q.C., and Dean Peter Burns, Q.C., Commissioners. Details of their appointments may be found in previous Annual Reports. All Commissioners, other than the Chairman, serve on a part-time basis. A full list of past and present members of the Commission is set out as an Appendix to this Report.

III THE PROGRAM

A. DEVELOPING THE PROGRAM

1. INTRODUCTION

When the Law Reform Commission of British Columbia became operational in 1970 its first step was to develop a program of projects and studies which it intended to pursue. Developing its program involved a highly visible process of consultation with the Ministry of the Attorney General, the legal profession and the public.

Today, owing to the incremental nature of changes in the Commission's program, the process of developing it is much less visible. From time to time, therefore, we are asked about the way in which topics are selected for examination and report by the Law Reform Commission. The purpose of this portion of our *Annual Report* is to attempt, briefly, to describe the process.

2. Sources Of Projects

(a) The Attorney General

Under section 2 of the *Law Reform Commission Act* the Attorney General may refer specific subjects to the Commission for examination and report. Various Attorneys General have done so on a number of occasions over the years, and about 30 percent of our Reports have their origins in such a reference.

(b) Other Sources

(i) Suggestions from Outside the Commission

The Commission frequently receives suggestions for law reform measures or which identify areas of the law regarded as unsatisfactory. These suggestions emanate from the legal profession (both from individual practitioners and through the official organs of the bar such as the sections of the Canadian Bar Association), judges and the general public.

(ii) Projects Generated Internally

The Commission's legal staff monitors a large number of reports and legal periodicals. These are a fruitful source of potential projects. An article written by an academic lawyer in a learned journal may identify unsatisfactory aspects of the law which call for reform. Judges will occasionally find themselves applying a doubtful rule and the reasons for judgment may set out a cry (sometimes ringing, sometimes muted) for reform. We also maintain reciprocal exchange agreements with other law reform agencies throughout the world. Occasionally work being done by a law reform agency in, say, Australia, may alert us to the fact that our own law is deficient in the area under consideration.

(iii) Action on Suggestions

Once an area of the law has been identified as suitable for possible action by the Law Reform Commission, one of two things might happen. First, if the suggestion deals with a short, neat point which is unlikely to be controversial, we may

proceed on it immediately with a Minor Report to the Attorney General.

Most often, however, the Commission's first step is to open a file on the suggestion as one of a large number of "subjects of interest." Once such a file has been opened, we start gathering material on the topic under consideration. We may communicate with individuals knowledgeable on the particular topic to get their views on the desirability of reform in the area. We may canvas other jurisdictions to see if the particular subject has been perceived as a problem there and, if so, what the response has been.

Approximately once each year we review our program and, in particular, the subjects of interest files to identify those topics which might be suitable for addition to our program for active work.

3. Criteria For Selection

Given the numbers of the various sources of topics for potential Commission projects, it is necessary to pick and choose among them. What considerations underlie a decision to select one topic, in preference to another, for action? There is no single criterion, but a number of the factors relevant to this decision are outlined below.

(a) Credibility

The Commission and its professional staff is composed wholly of lawyers and the Commission has, generally, tended to confine its work to areas where lawyers are recognized as having particular credibility. Our specialty is the formulation of legal policy. If in a particular topic, the issues of legal policy are less significant than policy issues on which other disciplines have greater expertise, we would probably tend to defer. This is an issue on which we have commented at length in previous Annual Reports.

(b) Is There a Legal Solution?

Many issues brought to the Commission's attention do not turn on defects in the substantive law. Rather, the defects are in matters of administration and the institutions through

which the law is applied. While there is no hard and fast position on this, the Commission tends to be cautious in approaching topics which appear to call for altered institutional arrangements rather than "self-executing" changes in black letter law.

(c) Balance in the Program

The Commission attempts to maintain a program which is balanced in a number of ways. There is a balance between large projects and small projects. There is a balance between projects which are intensely theoretical and projects which are intensely practical. There is also a balance in respect of subject matter. It would be unfortunate if the Commission were perceived as devoting its resources wholly to lengthy projects on one narrow area of law however valuable or important work in that area might be.

(d) Empirical Research

Empirical research is expensive and time-consuming and our ability to undertake it is very limited. If it is in the nature of a particular project that credible recommendations can only be made on the basis of empirical research which is beyond our means, we would usually not undertake it.

(e) Likelihood of Implementation

The issue of how far the program of a law reform agency should be shaped by implementation considerations is a difficult one on which views may, quite properly, vary widely. The view that has generally prevailed in this Commission over the years is that we should not be deterred from undertaking a study in which an important point of principle is involved by reason only that the government of the day may not share the Commission's sense of urgency with respect to reform in the area involved, or may be hostile to the recommendations likely to emerge. At the same time, we have been sensitive to the fact that the Commission is a publicly funded agency and this carries with it the responsibility to manage its resources in the way most likely to achieve results.

4. Summary

As law reform agencies go, the British Columbia Commission has adopted a highly pragmatic approach to the way in which it selects its topics. Once a topic has been selected, however, the Commission has been less restrained and has been prepared to come up with highly innovative solutions and proposals. It should also be noted that the criteria which are applied to the selection of Commission topics are not part of an articulated policy. They really emerge from an examination of the Commission's work over the years.

B. CARRYING OUT THE PROGRAM

1. Research And Writing

The research to carry out the program calls for time-consuming work by qualified people. This can be achieved by having the research done by personnel who are employed full-time or by persons with special expertise who are retained on a part-time or occasional basis. Although in its early years, the Commission relied heavily on outside consultants, our experience has led to a preference for the former approach. Consequently, most of the research and writing is now conducted by full-time members of the Commission staff.

2. The Consultation Process

The Commission makes a general practice of inviting comment and criticism of its research and analysis before submitting a formal Report on any particular subject. This process of consultation greatly assists the Commission in developing recommendations for the reform of the law that are both relevant and sound.

The chief means by which the Commission carries out this process is through the circulation of Working Papers to those who are knowledgeable, or who have a special interest in the subject under study. A Working Paper sets out the tentative views of the Commission and outlines the background against which these views were formed. Comment on all aspects of the Working Paper is invited. Occasionally, copies of a draft Report may be given limited circulation for comment, if

the topic under consideration makes the wide circulation of a Working Paper inappropriate.

Whatever consultative mechanism is adopted, the Commission thoroughly re-examines its tentative conclusions in the light of the comment and criticism received. Final recommendations are developed accordingly.

C. CURRENT PROGRAM

The description below is limited to those projects which were active in the past year. Details of other projects may be found in earlier Annual Reports. Included as Appendix A is a table setting out all Reports which the Commission has made to date, and references to legislation in which the recommendations have been implemented in whole or in part. In Appendix B, another table sets out those matters which are now under consideration.

1. Debtor-Creditor Relationship Topics

(a) Set-off

When one person attempts to enforce payment of a debt owing to him by another, it is regarded as fundamentally fair that the second person should be entitled to have taken into account any money he is owed by the first. This is usually referred to as a right of set-off.

The modern law of set-off is a curiosity. It consists of legal and equitable principles formulated to overcome procedural problems and jurisdictional limitations which were resolved in 1873. The complexities of those principles serve no modern purpose, and obscure the underlying policies of the law to such a degree that they are frequently overlooked by modern courts. Following reforms late in the nineteenth century, it appeared that the law of set-off had largely been submerged in rights of counterclaim. More recently, courts have gone back to nineteenth century law to resolve modern problems, and have reinforced the distinctions between set-off and counterclaim. In this process, several important policies, namely that an assignee should be in no better position than his assignor,

and that a broad right of set-off is available in situations of insolvency, have been overlooked or forgotten.

In July 1988 we submitted our *Report on Set-off* (LRC 97) which canvassed these issues and set out recommendations designed to rationalize and clarify rights of set-off and counterclaim.

(b) Execution Against Shares

The *Study Paper on the Office of the Sheriff* published by the Commission in 1983 identified a number of substantive and procedural problems which arise out of the law which currently governs the seizure and sale of shares by an execution creditor. These problems were examined in greater detail in our *Working Paper on Execution Against Shares* (WP No. 55) which was circulated for criticism and comment in May, 1987.

The Working Paper tentatively concluded that there are a number of difficulties inherent in the current legislation which governs execution against shares and proceeded to develop detailed proposals for a new and modern scheme. The proposals were embodied in draft legislation to amend the *Court Order Enforcement Act*.

A significant feature of the proposals is that they focus special attention on shares in so-called "private companies" and provide specific guidance as to the manner of seizure and the manner of disposition of seized shares. The latter aspect raises very difficult issues in achieving an appropriate balance between the rights of creditors, the judgment debtor and other shareholders.

The Commission is currently considering the responses the Working Paper has stimulated and it continues to consult with interested parties.

(c) Enforcement of Extra-Provincial Judgments

Most Canadian provinces have enacted a version of the *Uniform Reciprocal Enforcement of Judgments Act*. In British Columbia it appears as Part 2 of the *Court Order Enforcement Act*. This is not reforming legislation. It merely provides a summary procedure to achieve the same final result as the common law alternative of suing on an extra-provincial judg-

ment for money. There are still a variety of defences which may be raised to defeat the enforcement of such a judgment.

The availability of these defences may be sensible with respect to judgments from outside Canada but, it may be argued, in a federation different considerations apply and judgments emanating from other Canadian provinces ought to stand on a somewhat different footing.

The aim of this project is to examine some of the implications of relaxing the rules respecting the recognition and enforcement of judgments from other Canadian jurisdictions and whether it would be possible or desirable for a single jurisdiction to proceed in this way. Our research and writing on this topic is now well advanced and we hope to be in the position to circulate a Working Paper before the end of 1989.

2. TRUST AND ESTATE TOPICS

(a) Wills and Changed Circumstances

A number of discrete rules of law exist in relation to wills and succession which may result in the distribution of a testator's property in ways which do not accord with his actual or likely intent. Ademption, equitable conversion, abatement, satisfaction, election, and lapse are examples of such rules. A thread which joins many of them is that they represent an imperfect attempt by the law to accommodate changes in circumstances which arise after the testator has recorded his wishes in a will. The current law emphasizes the mechanical application of a rule rather than ascertaining and giving effect to the likely wishes of the testator, in the light of the changed circumstances.

A persistent theme of previous Commission work in relation to the law of succession has been to ensure, so far as it is possible to do so, that technical rules do not prevent the courts from giving effect to a testator's wishes in the disposition of his property. In January, 1989 we submitted our *Report on Wills and Changed Circumstances* (LRC 102) which pursues that theme and sets out a number of recommendations designed to modify the rules noted above.

(b) The Land (Settled Estate) Act

In November 1988 we submitted our *Report on the Land (Settled Estate) Act* (LRC 99). This Act is based on mid-Victorian legislation aimed at a legal regime where large amounts of land were held in strict settlement. It is complex, intricately drafted legislation, difficult to comprehend and little used today. Like much nineteenth century legislation, it addresses in detail procedural issues which modern legislation would leave to be resolved by the *Rules of Court*, and it defines the kinds of transactions that may be authorized with excruciating particularity. If one were to approach the *Land (Settled Estate) Act* with a view to redrafting it, thirteen pages of the statute book could be replaced with a single section which permits the courts to authorize the exercise of any power necessary for the management or administration of settled land.

But that step is unnecessary since much of what the Act deals with simply has no application in British Columbia. Moreover, in almost every circumstance in which the Act might provide a remedy, the same (or superior) relief is available under another enactment. A relatively minor amendment to the *Trust Variation Act* can make the redundancy of settled estate legislation in British Columbia total. The Report recommends that such an amendment be made and the *Land (Settled Estate) Act* be repealed.

3. Contract Law Topics

(a) Deeds and Seals

In June 1988 we submitted our *Report on Deeds and Seals* (LRC 96). Whenever it is necessary to record an agreement, the parties usually do so by making a simple contract. Sometimes, however, the parties may affix seals to the contract following their signatures. Affixing a seal has a profound effect in law.

An instrument executed under seal is called a deed. Obligations recorded in a deed are subject to an area of law in which the principles sometimes differ dramatically from those which are applied to a simple contract. Since few people are aware of these differences, execution of an instrument under

seal is a practice which is attended by some danger. Moreover, curious results are to be found in the cases where one legal consequence follows from a contractual obligation, and another, totally different, consequence follows when the same obligation is contained in a deed.

In the Report the Commission examines the historical development of the current law governing deeds, and reviews amendments to the law adopted or proposed in other jurisdictions. It is recommended that legislation be enacted to provide that obligations created or recorded by deed have the same legal effect as obligations contained in a simple contract. The enactment of such legislation would dramatically simplify the law and render it more just.

(b) Injurious Reliance

In our previous *Annual Report* we described a project which was inspired by two recent cases on tendering a bid on a construction project. Our intention was to "examine the issues and interests at stake and to develop proposals for reform if appropriate." Further research was undertaken and the concerns raised by these cases proved to be the point of departure for a broader examination of the relief which should be available when certain things go awry in the process of contract formation. Accordingly, our focus has shifted to "injurious reliance," and our research continues on that basis.

4. REAL PROPERTY LAW TOPICS

(a) Co-Ownership of Land

In November 1988 the Commission submitted its *Report on Co-ownership of Land* (LRC 100). It addresses the two ways in which land may be co-owned by two or more persons: the joint tenancy and the tenancy in common. The Report brings together a group of issues and concerns that relate to co-ownership.

Co-ownership suffers from an outmoded legislative framework within which the rights of co-owners are regulated and asserted. Provisions which define their rights and remedies are scattered through several statutes. The most important of these, the *Partition of Property Act*, is over 100 years

old and its age is reflected in its antiquated language and concepts. Restatement, consolidation and simplification are called for.

One particular form of co-ownership, joint tenancy, raises special issues. The current rules respecting severance (the process whereby a joint tenancy becomes a tenancy in common) can frequently lead to unfair results. They permit a "secret severance" which allows one co-owner, in essence, to deprive the other of his right of survivorship. They also may cause a severance in circumstances where no owner wants or intends that result, and no purpose is served by it. Finally, ancient legal doctrines dictate that joint owners cannot hold unequal shares in the property. This means that the parties may be deprived of a potentially useful way of holding property.

The pivotal feature of the Report is draft legislation designed to provide a modern restatement of the rights that co-owners may assert with respect to profits and expenses associated with the land, and the remedies of partition and sale of the land. The draft legislation also incorporates changes to the substantive law arising out of our examination of the issues described above.

(b) Commercial Tenancy Act

This project concerns selected topics in the law of landlord and tenant as it applies to nonresidential tenancies. The focus of our work is a critical examination of the *Commercial Tenancy Act*. This Act is a pot-pourri of remedial legislation enacted at various times over the course of four centuries and which, for the most part, was incorporated into our statute book in the late 1890's. Many of its provisions were, even then, outdated and the passage of a further 90 years has only aggravated matters. The Act embodies obsolete concepts and employs obscure language, both of which render inaccessible important rules of law. There are also a number of important issues in the law relating to commercial tenancies that should be clarified and restated in legislation.

In July 1988 we circulated a *Working Paper on the Commercial Tenancy Act*. This paper takes a fresh look at virtual-

ly every provision of the Act with a view to developing wholly new legislation which is simple and comprehensible.

(c) Joint Project on Land Title Law

The Alberta Law Reform Institute has been the catalyst for a joint project on land title law. Participating are representatives of law reform agencies and land registry officials from the western provinces, the territories and Ontario. We joined the project early in 1987 and are participating in co-operation with J.P. Malcolm McAvity, the Director of Land Titles for the Province.

The first stage of the joint project involves the preparation of draft materials under the auspices of the Institute. These will form the focal point for discussion and debate among the participating jurisdictions. Two meetings were held during the past year, the first in Edmonton in mid-November, 1988 and the second, hosted by the Commission, in Vancouver in mid-March, 1989.

The Commission does not regard its participation in the joint project as foreclosing a separate review of particular land title issues under study in the joint project.

(d) Floating Charges on Land

In January 1989 we submitted a *Report on Floating Charges on Land* (LRC 103). The floating charge on land seldom forms a lender's primary security. A fixed charge such as a conventional mortgage is generally regarded as superior. But the floating charge on land is used occasionally (such as where the borrower is a land developer or speculator and the land, which is his "inventory," is subject to rapid turnover). Its use raises two issues.

First, the floating charge does not fit comfortably within our system of land registration, so that there is a substantial measure of uncertainty as to the way in which land title legislation applies to a floating charge on land. Second, the imminent enactment of new personal property security legislation, and the repeal of those sections of the *Company Act* which provide for the registration of encumbrances on corporate property will deprive lenders of a convenient place to register these

charges. Registration is necessary in order to assert priority should the borrower become bankrupt.

The Report, which was based on recommendations made to the Commission by a Special Advisory Committee, addresses both of these issues in draft legislation proposed for the amendment of the *Land Title Act*.

(e) Practice in Relation to the Cancellation of a Certificate of Lis Pendens

In November 1988 the Commission submitted a Minor Report on this topic. The Report addresses certain difficulties which arise under sections 231 and 235 of the *Land Title Act* when a person wishes to use those provisions in seeking the cancellation of a certificate of *lis pendens* from the title of land. The most serious difficulty is that the law currently requires the applicant to bring a fresh proceeding, by petition, for relief. The applicant may not apply in the proceeding in which the *lis pendens* was issued. The Minor Report is printed as Appendix E to this *Annual Report*.

5. Vicarious Liability Under The *Motor Vehicle Act*

Vicarious liability is a concept used in the *Motor Vehicle Act* to define the legal position of a person who owns a vehicle driven by another person in a way that gives rise to civil liability, or violates provincial law. Broadly speaking, the Act imposes liability on the owner of the vehicle for wrongs or offences that are committed by the operator. This liability arises under six loosely related provisions of the Act, namely sections 76 to 81.

The very concept of vicarious liability is one which many people have difficulty accepting. The notion that only blameworthy conduct should attract punishment or liability is deeply ingrained. The use of vicarious liability in this context, therefore, raises a number of important issues. Is the imposition of vicarious liability the best way of attaining the goals of the legislation? What should the limits of liability be? What kinds of defences should be available to an owner liable for the acts of another? What kind of conduct, if any, should excuse him from liability? What sorts of persons should the notion of owner encompass?

A consideration of these issues is central to our work on this topic. The preparation of a final Report is well advanced. In it, the Commission will explore modifying the application of vicarious liability for offences by adopting alternative strategies and clarifying the meaning of "owner" for both civil and penal liability under the Act.

6. Structured Compensation For Personal Injury

In our last *Annual Report* we described the circumstances which caused us to restore to our Program a study on the delivery of compensation for personal injuries. The need for an alternative to the conventional "lump sum" award of damages, such as periodic payments, continues to be voiced by the judiciary and knowledgeable commentators. Developing a workable and acceptable alternative is not, however, a trivial task. Our work continues.

7. Family Property

Late in 1983, a decision was taken by the Commission to re-enter the troubled area of family law. Among the largest and most difficult of the individual topics which were identified as suitable for potential action by the Commission was that of family property. As a preliminary step, we commissioned a preliminary survey of the then current jurisprudence and practice surrounding the provisions of the *Family Relations Act* concerning family property. The research undertaken formed the basis of a *Study Paper on Family Property* that was published in 1985. The Study Paper contained no formal recommendations by the Commission for changes to the *Family Relations Act* although the paper did point out some directions that reform might take.

The Study Paper was issued with two aims in mind. First, as the introduction to the paper stated, it was hoped that the paper might "lead to a more sophisticated understanding of, and approach to, the Act" which, in turn, might diminish the need for legislative change. Second, the paper would provide a foundation for further Commission work in relation to family property. One area covered by the paper that was sub-

sequently brought forward as a formal report concerned *Spousal Agreements* (LRC 87, 1986).

In November 1987 the former Attorney General wrote to the Commission requesting that we review the law in relation to the property consequences of marriage breakdown, with particular emphasis on the status of property acquired before marriage and of inherited property. This reference opened up the balance of the issues canvassed in the Study Paper and further study and research has been carried out. Our work has advanced to the point where a draft Working Paper is virtually settled. We expect to begin the process of consultation shortly.

8. THE DIVISION OF PENSION RIGHTS ON MARRIAGE BREAKDOWN

In January, 1988, we received a further request: to examine and report on the division of pension rights on marriage breakdown. This reference, obviously, is intimately connected with our more general work on family property described above. Pensions, however, raise a number of issues which make it sensible to deal with this subject separately from the large general study on family property. These issues are both theoretical and mechanical. Dividing a future stream of income in a way which is fair to both spouses (and to the pension administrator) is qualitatively different from dividing a present asset of fixed value. Our basic research is well advanced and we hope to bring forward tentative proposals for reform later in 1989.

9. COURT JURISDICTION

The Commission is in the final stages of preparing for publication a Study Paper concerned with the extra-territorial jurisdiction of the Supreme Court of British Columbia. The Study Paper derives from a research paper prepared by John Horn for the Attorney General's Rules Revision Committee of which he is a member.

The Horn study was a response to a long-standing concern of the Committee about the effect of the revision of the *Supreme Court Rules* in the mid-1970s. The revised *Rules* significantly relaxed the former rules for service of legal process

outside the province. The Committee's concern centred on the relationship between the rules governing service outside the province and the substantive jurisdiction of the court. This relationship is not free of ambiguity and, in altering the former, it is likely that the latter had also been changed in some way. The Committee felt that a relatively detailed study of court jurisdiction itself was required -- thus the Horn study.

The Horn study was considered by the Committee earlier in 1988 and, at that time, a question was raised whether the Law Reform Commission might have a role to play in further developments with respect to it. A number of factors which argued in favour of Law Reform Commission involvement, and our own sense that the Horn study was a document which deserved broader exposure, made us very receptive to an invitation that we participate, in some fashion, in carrying forward this work.

Our project on the *Enforcement of Extra-Provincial Judgments* has been described earlier in this Report. Particular attention is being devoted to the possibility of pursuing a "full faith and credit" policy with respect to judgments from the courts of other Canadian provinces. In the course of considering the various issues involved, it has become increasingly clear that our own project cannot credibly proceed without some consideration of jurisdictional issues and virtually the whole of the Horn study is relevant to this project.

10. Report Of The Justice Reform Committee

A major event in 1988 was the *Report of the Justice Reform Committee* which was submitted to the Attorney General in early December. A number of the recommendations made in that Report touch on the work of the Law Reform Commission, both directly and indirectly. In particular, the Justice Reform Committee recommended that particular topics be referred to the Law Reform Commission for study.

The Law Reform Commission developed, and submitted to the Attorney General, a formal Report (LRC 101) which responded to that of the Committee. It commented on these, and other areas of common interest. That response is set out in full as Appendix F.

11. Appeals From Statutory Agencies

The tentative addition to our program of a project on this topic was described in our *Response to the Report of the Justice Reform Committee*, set out as Appendix F. The future course of the Commission's project necessarily depends on the extent to which the JRC recommendation is adopted by Government.

12. The Law Reform Database Project

The Commission is in the process of creating a computerized database of law reform activity in Canada, the Commonwealth, and selected American jurisdictions. The database is intended to serve as a research tool to assist in ascertaining what attention particular topics may have received from law reform institutions. The database currently covers approximately 3,000 documents, each document comprising a report, working paper, or similar publication emanating from a law reform agency. The database is described in greater detail in Appendix G.

13. Subjects Of Interest

Preliminary research or the gathering of material regularly proceeds on a number of matters which are not yet part of the Commission's program or under active consideration for addition to it. In most cases the preliminary work is to determine if a particular topic is appropriate for formal inclusion in the program as a Commission project. Many of these matters which are under preliminary consideration arise out of particular suggestions made, and problems drawn to the Commission's attention, by the legal profession and members of the public.

IV ACTION ON COMMISSION RECOMMENDATIONS

A. INTRODUCTION

In previous Annual Reports we have expressed our pleasure in the interest taken in our work by successive Attorneys General, as reflected in the implementation of recommendations contained in past Commission Reports. This interest continued during the past year. The past year saw two initiatives which carried forward Commission work and recommendations made in five different Reports.

B. LAW REFORM AMENDMENT ACT, 1988

The first initiative was the introduction, in the 1988 session of the legislature, of the *Law Reform Amendment Act*, 1988, S.B.C. 1988, c. 42. It contained provisions to implement the recommendations made in the following Reports:

Personal Liability Under a Mortgage or Agreement for Sale (LRC 84, 1985)

The Domicile of a Minor (LRC 82, 1985)

Obsolete Remedies Against Estate Property: Estate Administration Act, Part 9 (LRC 91, 1987)

Action Per Quod Servitium Amisit (LRC 89, 1986)

Details of these recommendations may be found in the Reports noted and in previous Annual Reports.

C. PERSONAL PROPERTY SECURITY LEGISLATION

In April, 1988 the Ministry of Finance and Corporate Relations brought forward, for discussion and comment, a package of materials relevant to the introduction of new personal property security legislation in this Province. They consisted of a draft *Personal Property Security Act* and an extensive explanatory comment on its provisions. In an accompanying memorandum, the responsible Minister indicated that it was the present intention of government that the new legislation would be enacted at the 1989 session of the Legislature and brought into force sometime in 1990.

For the Law Reform Commission, this represents the penultimate step in a reform process that stretches back many years. This topic formed one of the first projects on the Commission's Program and in 1975 a lengthy *Report on Personal Property Security* (LRC 23) was submitted. In the ensuing years Commission personnel served on a number of bodies which worked toward the development of model and uniform legislation in this area.

The draft act represents, to us, the culmination of this process. It is "state of the art" in the sense that it incorporates all the latest and best thinking in this area and draws on the experience of jurisdictions which have had legislation of this kind in place for some time. We are pleased to note that many innovations and ideas which first appeared in our 1975 Report have been adopted in the draft act (and elsewhere). We believe that our Report, and subsequent activity, has made a useful contribution to the development of Canadian law in this area.

V THE AVAILABILITY OF COMMISSION PUBLICATIONS

All final Reports on major topics issued by the Commission are published with the intention that they be available to the public. Our Annual Reports are distributed by the Commission and are available on request and free of charge so long as stocks last.

From time to time the Commission also submits minor Reports, in the form of a letter to the Attorney General. These minor Reports are usually reproduced in full as appendices to the Annual Report which covers the period in which the minor Report was made.

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Crown Publications Inc. maintains a "notification list" and all persons on the list are advised upon publication of a Commission Report, so they may order copies if they wish. Standing orders for Commission Reports may also be lodged by certain categories of buyer. Anyone who wishes to be added to the notification list, or wishes information concerning standing orders, should contact Crown Publications Inc.

The Commission is solely responsible for the distribution of its Working Papers. These documents are usually produced in limited quantities and our supplies of them are invariably exhausted by, or shortly after, their initial distribution. Usually we are unable to respond to requests either for copies of past Working Papers or to be placed on a mailing list to receive copies of all Working Papers.

VI ACKNOWLEDGEMENTS

A. COMMISSION STAFF

As we have pointed out in previous Annual Reports, our policy of doing the greater part of our research work internally, rather than relying on outside consultants, places a heavy burden of responsibility on the shoulders of our permanent staff. They invariably respond to the challenge with energy, enthusiasm and careful scholarship. We wish to express our sincerest thanks to all those individuals who, in the past year, contributed to our work in this way.

Our particular thanks go to Thomas G. Anderson, Counsel to the Commission, for the loyalty and industry he has devoted to the affairs of the Commission. As our senior staff member, he bears a heavy responsibility for the over-all direction of the Commission's program as well as carriage of specific projects.

We are also indebted to other individuals who were members of the Commission's legal research staff during the past

year: J. Bruce McKinnon, Linda Reid, Deborah M. Cumberford and Monika Gehlen.

Over the summer months two students worked with us. Jennifer Chow, of the University of British Columbia Faculty of Law, and Jill Turner, of the University of Victoria Faculty of Law, undertook basic research on a number of topics and provided the Commission's full-time research staff with valuable assistance.

Our support staff also make a notable contribution to the work of the Commission. They bring intelligence and efficiency to their duties and share a concern that our work should be of the highest quality in every respect. Our support staff presently consists of Sharon St. Michael, Secretary to the Commission, and Linda Grant, who operates our desktop publishing system. We thank them for their efforts on our behalf.

B. JUDGES' LAW REFORM COMMITTEE

The Judges' Law Reform Committee is important to our operation. This Committee provides a continuing point of contact with the judiciary. The current members of the Committee are The Honourable Mr. Justice Locke of the Court of Appeal (Chairman), The Honourable Mr. Justice Bruce Macdonald, The Honourable Madam Justice Huddart and The Honourable Mr. Justice Cowan of the Supreme Court, The Honourable Judge Scarth of the Vancouver County Court, and His Honour Judge Collings of the Provincial Court. During the past year the following individuals were also members of the Committee: The Honourable Mr. Justice Macfarlane of the Court of Appeal (past Chairman) and The Honourable Mr. Justice Spencer and The Honourable Mr. Justice Lysyk of the Supreme Court.

The members of the Committee assist us through responding to our Working Papers and other consultative documents and by calling to our attention defects in the law that they are well situated to identify. They bring a unique perspective to bear on our work. The responses and advice which the Committee provides are invariably cogent and helpful. The work of the Judges' Committee plays a major role in the law reform process and we are immensely grateful to the indi-

vidual members of the bench who give so generously of their time and energy to this end.

C. THE LAW FOUNDATION

Previous Annual Reports have described the generous response of the Law Foundation of British Columbia to the Commission's requests for funding to help sustain its operation. In the past year, the Foundation again provided much needed assistance.

The support of law reform is listed as one of the Foundation's objects in the statute under which it is constituted. In enabling the Law Reform Commission to carry on with its functions, the Law Foundation truly fulfills that object and renders an important service to the people of the Province. Our particular thanks go to Ken Antifaev, Chairman of the Foundation.

D. SPECIAL ADVISORY COMMITTEE

Earlier in this Report we referred to the establishment of a Special Advisory Committee with respect to Floating Charges on Land. The members of that Committee were:

Professor Terry J. Wuester, Chairma

Hon. Mr. Justice B. Macdonald

Mary V. Newbury

Trevor Bell

B.W.F. Fodchuk

Robert W. Stuart

Mitchell Gropper

Dave F. Tysoe

J.P. Malcolm McAvity, Director of Land Titles

The Commission is fortunate that this group of knowledgeable and uniquely qualified individuals agreed to serve on the Committee. We would like to express our gratitude to each member of the Committee for the time and effort which was devoted to this study. Our particular thanks go to the Com-

mittee Chairman, Professor Wuester, for the very special contribution he made to the Committee's work.

E. CONTINUING LEGAL EDUCATION SOCIETY

Our earlier Annual Reports have referred to the closer relationship which has grown up between the Continuing Legal Education Society of British Columbia (C.L.E.) and the Law Reform Commission. A particular aspect of this relationship has been the continuing participation of Thomas G. Anderson, Counsel to the Law Reform Commission, in the work of C.L.E. In particular, he served on the editorial board for the development of the Family Law Agreements Manual and currently serves on the editorial board which is overseeing the production of a further practice manual on family law matters. He also served on the faculty of two C.L.E. courses.

F. MINISTRY AND GOVERNMENT PERSONNEL

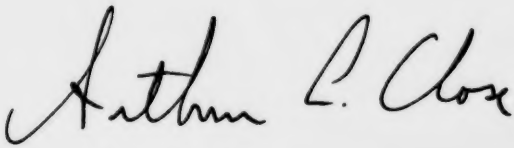
There are a number of individuals and agencies within Government who have in the past year, contributed to the work of the Commission.

The Law Reform Commission has always had a special relationship with the office of Legislative Counsel. Its personnel are invariably, within the limits of their resources, responsive and helpful when we request assistance in the preparation of proposed legislation. We particularly wish to thank Cliff Watt, Chief Legislative Counsel, and the other members of his office.

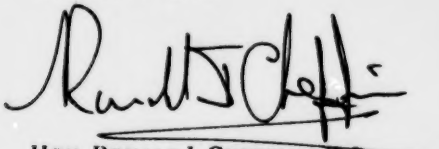
The Queen's Printer is responsible for printing our Reports. Its personnel bring a high level of skill, dedication and professionalism to the work they do for us and we are pleased to take this opportunity to thank them and acknowledge their important role.

We also wish to express our appreciation to Jane Taylor, Director of Library Services to the Ministry. She has assisted us in keeping our own collection up to date and provided access to new materials in a timely fashion.

Finally, we wish to thank the Attorney General and all those within his Ministry who, during the period under review, in their dealings with the Commission on a day-to-day basis have contributed to our work and made life easier. In particular our thanks go to The Honourable E. N. Hughes, Q.C., the Deputy Attorney General and various officers within the Information Services, Data Services, Policy Planning, Financial Services and the Facilities Management divisions and units of the Ministry. All have, in one way or another, assisted us greatly.

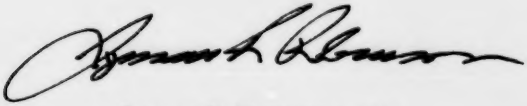


ARTHUR L. CLOSE

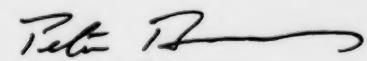


HON. RONALD I. CHEFFINS, Q.C.

MARY V. NEWBURY



LYMAN R. ROBINSON, Q.C.



PETER T. BURNS, Q.C.

Appendix A

REPORTS AND RECOMMENDATIONS MADE BY THE LAW REFORM COMMISSION OF BRITISH COLUMBIA

No.	Title	Date	Recommendations Implemented in Whole or in Part by
1	Limitations--Abolition of Prescription*	Dec. 1970	*Land Registry (Amendment) Act, 1971*, S.B.C. 1971, c. 30, s. 8 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, s. 24).
2	Annual Report, 1970*	Dec. 1970	Not applicable
3	Frustrated Contracts Legislation*	Feb. 1971	*Frustrated Contracts Act*, S.B.C. 1974, c. 37 (see now *Frustrated Contract Act*, R.S.B.C. 1979, c. 144); *Landlord and Tenant Act*, S.B.C. 1974, c. 45, s. 61(e) (see now *Residential Tenancy Act*, R.S.B.C. 1979, c. 365 s. 8(3)); *Commercial Tenancies Act*, R.S.B.C. 1960, c. 207, s. 34 (see now *Commercial Tenancy Act*, R.S.B.C. 1979, c. 54, s. 33).
4	Debt Collection and Collection Agents*	Mar. 1971	*Debt Collection Act*, S.B.C. 1973, c. 26 (see now *Debt Collection Act*, R.S.B.C. 1979, c. 88).
5	Expropriation*	Dec. 1971	*Expropriation Act*, S.B.C. 1987, c. 23.
6	Annual Report, 1971*	Dec. 1971	Not applicable
7	*Mechanics' Lien Act**	June 1972	*Builders Lien Amendment Act, 1984*, S.B.C. 1984, c. 16, s. 3 [in part]; *Builders Lien Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 17, s. 1 [in part].
8	Deficiency Claims and Repossessions*	June 1972	*Conditional Sales Act*, S.B.C. 1973, c. 19 (see now *Sale of Goods on Condition Act*, R.S.B.C. 1979, c. 373); *Bills of Sale Act*, S.B.C. 1973, c. 7 (see now *Chattel Mortgage Act*, R.S.B.C. 1979, c. 48).
9	Legal Position of the Crown*	Dec. 1972	*Crown Proceedings Act*, S.B.C. 1974, c. 24 (see now *Crown Proceeding Act*, R.S.B.C. 1979, c. 86); *Interpretation Act*, S.B.C. 1974, c. 42, s. 13 (see now *Interpretation Act*, R.S.B.C. 1979, c. 206, s. 14).
10	Annual Report, 1972*	Dec. 1972	Not applicable

* Report is out of print

No.	Title	Date	Recommendations Implemented in Whole or in Part by
11	Interim Report on Evidence*	Feb. 1973	*Attorney-General Statutes Amendment Act, 1975*, S.B.C. 1975, c. 4, s. 6 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, ss. 37, 38).
12	Pre-Judgment Interest*	May 1973	*Prejudgment Interest Act*, S.B.C. 1974, c. 65 (see now *Court Order Interest Act*, R.S.B.C. 1979, c. 76).
13	Landlord and Tenant--Residential Tenancies*	Dec. 1973	*Landlord and Tenant Act*, S.B.C. 1974, c. 45 (see now *Residential Tenancy Act*, S.B.C. 1984, c. 10.
14	Annual Report, 1973*	Jan. 1974	Not applicable
15	Limitations--General*	Mar. 1974	*Limitations Act*, S.B.C. 1975, c. 37 (see now *Limitation Act*, R.S.B.C. 1979, c. 236); *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 6 [in part].
16	Costs of Accused on Acquittal*	June 1974	----
17	Procedure Before Statutory Bodies*	Nov. 1974	----
18	A Procedure for Judicial Review of the Actions of Statutory Bodies*	Dec. 1974	*Judicial Review Procedure Act*, S.B.C. 1976, c. 25 (see now *Judicial Review Procedure Act*, R.S.B.C. 1979, c. 209).
19	Annual Report, 1974*	Jan. 1975	Not applicable
20	Costs of Successful Unassisted Lay Litigants*	Apr. 1975	----
21	The Termination of Agencies*	Apr. 1975	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 91 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, ss. 1-4); *Miscellaneous Statutes Amendment Act (No. 2), 1987*, S.B.C. 1987, c. 43, s. 104 (see now *Trustee Act*, R.S.B.C. 1979, c. 414, ss. 14(7), 14(11).
22	Powers of Attorney and Mental Incapacity*	May 1975	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 52 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 7).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
23	Personal Property Security*	Oct. 1975	----
24	Security Interests in Real Property: Remedies on Default*	Dec. 1975	*Miscellaneous Statutes (Court Rules) Amendment Act*, S.B.C. 1976, c. 33, s. 94(a) [in part] (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16); Supreme Court Rules, Rule 50 (11), 3(2) [in part]; *Land Titles Act*, S.B.C. 1978, c. 25 [in part] (see now *Land Title Act*, R.S.B.C. 1979, c. 219, ss. 224-225); *Attorney General Statutes Amendment Act*, S.B.C. 1980, c. 1, s. 15 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 21.1) [in part]; *Property Law Act*, R.S.B.C. 1979, c. 340, s. 28 [in part]; *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 5 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16.1) [in part].
25	Annual Report, 1975*	Jan. 1976	Not applicable
26	Minors' Contracts*	Feb. 1976	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 1, 2, 10 (see now *Infants Act*, R.S.B.C. 1979, c. 196, Part 2.1 (ss. 16.1- 16.11)).
27	Extra-Judicial Use of Sworn Statements*	Apr. 1976	See, e.g., *Mineral Act, 1977*, S.B.C. 1977, c. 54, s. 20(2).
28	Rule in *Bain* v. *Fothergill**	June 1976	*Conveyancing and Law of Property Act*, S.B.C. 1978, c. 16, s. 33 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, s. 33).
29	Annual Report, 1976*	Dec. 1976	Not applicable
30	The Rule in *Hollington* v. *Hewthorn**	Jan. 1977	*Evidence Amendment Act, 1977*, S.B.C. 1977, c. 70 (see now *Evidence Act*, R.S.B.C. 1979, c.116, ss. 15(3), 80, 81).
31	Waiver of Conditions Precedent in Contracts*	Apr. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 49).
32	Proof of Marriage in Civil Proceedings*	June 1977	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 18 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, s. 58).

* Report is out of print

No.	Title	Date	Recommendations Implemented in Whole or in Part by
33	The *Statute of Frauds**	June 1977	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 7, 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 54).
34	Tort Liability of Public Bodies*	June 1977	----
35	*Offences Against the Person Act, 1828*, Section 28*	Aug. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 3).
36	Annual Report, 1977	Jan. 1978	Not applicable
37	*Absconding Debtors Act* and *Bail Act*: Two Obsolete Acts*	Mar. 1978	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8, ss. 1, 2.
38	The *Replevin Act**	May 1978	*Rules of Court*, Rule 46 as amended Nov. 26, 1981 by B.C. Reg 467/81. *Attorney General Statutes Amendment Act, 1982*, S.B.C. 1982, c. 46, ss. 3-6, 25, 37-41.
39	The *Attachment of Debts Act**	Oct. 1978	----
40	Execution Against Land*	Oct. 1978	----
41	Annual Report, 1978	Jan. 1979	Not applicable
42	Creditor's Relief Legislation: A New Approach	Jan. 1979	----
43	Guarantees of Consumer Debts*	June 1979	*Consumer Protection Amendment Act, 1980*, S.B.C. 1980, c. 6, s. 3. [in part].
44	Parol Evidence Rule	Dec. 1979	----
45	Annual Report 1979 (Limitation Periods in Actions Against Estates)	Jan. 1980	*Attorney General Statutes Amendment Act, 1980*, S.B.C. 1980, c. 1, ss. 7, 17 (see now *Estate Administration Act*, R.S.B.C. 1979, c. 114, s. 66(4)(b); *Negligence Act*, R.S.B.C. 1979, c. 298, s. 7(3).
46	Civil Litigation in the Public Interest	June 1980	----

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
47	Calculation of Interest on Foreclosure	Sept. 1980	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 28 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 18.1).
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	*Financial Administration Act*, S.B.C. 1981, c. 15, s. 67.
49	Annual Report 1980 (Discount Rates)*	Jan. 1981	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 30 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 51).
50	Cable Television and Defamation	Mar. 1981	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 9 (see now *Libel and Slander Act*, R.S.B.C. 1979, c. 234, s. 1["broadcasting"]).
51	Benefits Conferred Under a Mistake of Law	Sept. 1981	----
52	The Making and Revocation of Wills	Sept. 1981	----
53	Distress for Rent	Nov. 1981	----
54	Annual Report 1981	Jan. 1982	Not applicable
55	Arbitration	May 1982	*Commercial Arbitration Act*, S.B.C. 1986, c. 3. *Foreign Arbitral Awards Act*, S.B.C. 1985, c. 74 [in part].
56	Presumptions of Survivorship	Nov. 1982	----
57	The Crown as Creditor: Priorities and Privileges	Nov. 1982	----
58	Interpretation of Wills	Nov. 1982	----
59	Interest and Jurisdictional Limits in the County and Provincial Courts [Printed as an Appendix to LRC 60]	July 1982	*Miscellaneous Statutes Amendment Act (No. 1), 1984*, S.B.C. 1984, c. 25, s. 63 (see now *Small Claim Act*, R.S.B.C. 1979, c. 387, s. 2(3); *Miscellaneous Statutes Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 26, s. 2 (see now *County Court Act*, R.S.B.C. 1979, c. 72, s. 29(2)).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
60	Annual Report 1982	Jan. 1983	Not applicable
61	Standing of a Common Law Spouse to Apply Under the *Family Compensation Act* [Printed as an Appendix to LRC 73]	Jan. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, s. 3 (see now *Family Compensation Act*, R.S.B.C. 1979, c. 120, s. 1).
62	Interspousal Immunity in Tort	Mar. 1983	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 50-53, 79, 83, 98 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 55.
63	Peremptory Challenges in Civil Jury Trials	June 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 3, 4 (see now *Jury Act*, R.S.B.C. 1979, c. 210, ss. 18, 18.1).
64	Breach of Promise of Marriage	Aug. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 1, 36 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75).
65	Foreign Money Liabilities	Sept. 1983	----
66	Competing Rights to Mingled Property: Tracing and the Rule in *Clayton*'s Case	Sept. 1983	----
67	Bulk Sales Legislation	Oct. 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 11 - 13.
68	Intentional Interference with Domestic Relations	Nov. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 35, 37, 40 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75 [in part].
69	Illegal Transactions	Nov. 1983	----
70	Statutory Succession Rights	Dec. 1983	----
71	Minor (Interim) Report on the *Land (Wife Protection) Act* [Printed as an Appendix to LRC 73]	Jan. 1984	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 61-78 (see now *Land (Spouse Protection) Act*, R.S.B.C. 1979, c. 223).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
72	Minor Report on The Jurisdiction of Local Judges: Stays of Execution and Instalment Orders [Printed as an Appendix to LRC 73]	Feb. 1984	*Rules of Court*, Rule 42(25) as amended by B.C. Reg. 18/85, s. 15 (effective April 1, 1985).
73	Annual Report 1983/84	Apr. 1984	Not applicable
74	Covenants in Restraint of Trade*	Apr. 1984	----
75	Review of Civil Jury Awards	Sept. 1984	----
76	Compensation for Non-Pecuniary Loss*	Sept. 1984	----
77	Settlement Offers	Sept. 1984	*Rules of Court*, Rule 37(30) as enacted by B.C. Reg. 18/85, s. 10(b) [in part].
78	The Authority of a Guardian	Jan. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 22, 23 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, ss. 1, 25(2), 25(3)).
79	A Short Form General Power of Attorney [Printed as an Appendix to LRC 80]	Mar. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 92, 93 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 8 and Schedule).
80	Annual Report 1984/85	Apr. 1985	Not applicable
81	Performance Under Protest*	May 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 52 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, ss. 57, 58).
82	Minor Report on the Domicile of a Minor [Printed as an Appendix to LRC 86]	Sept. 1985	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, s. 2. (see now *Infants Act*, R.S.B.C. 1979, c. 196, s. 19.1).
83	Defamation*	Sept. 1985	----
84	Personal Liability Under a Mortgage or Agreement for Sale	Sept. 1985	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, ss. 5-7 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, ss. 19.1-20.3).

* Report is out of print

No.	Title	Date	Recommendations Implemented in Whole or in Part by
85	Mortgages of Land: The Priority of Further Advances	Jan. 1986	----
86	Annual Report 1985/86	Apr. 1986	Not applicable
87	Spousal Agreements	Aug. 1986	----
88	Shared Liability	Aug. 1986	----
89	Action *Per Quod Servitium Amisit*	Nov. 1986	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, s. 4.
90	The *Court Order Interest Act*	Jan. 1987	----
91	Obsolete Remedies Against Estate Property: *Estate Administration Act*, Part 9	Mar. 1987	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, ss. 1, 3, 8, 9.
92	Annual Report 1986/87	Apr. 1987	Not applicable
93	The Buyer's Lien: A New Consumer Remedy	Aug. 1987	----
94	Fraudulent Conveyances and Preferences	Jan. 1988	----
95	Annual Report 1987/88	Apr. 1988	Not applicable
96	Deeds and Seals	June 1988	----
97	Set-Off	July 1988	----
98	Minor Report on Practice in Relation to the Cancellation of a Certificate of *Lis Pendens* [Printed as an Appendix to LRC 104]	Nov. 1988	----
99	The *Land (Settled Estate) Act*	Nov. 1988	----
100	Co-Ownership of Land	Dec. 1988	----

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
101	Response to the Report of the Justice Reform Committee [Printed as an Appendix to LRC 104]	Dec. 1988	Not applicable
102	Wills and Changed Circumstances	Jan. 1989	----
103	Floating Charges on Land	Jan. 1989	----
104	Annual Report 1988/89	Apr. 1989	Not applicable

* Report is out of print.

Appendix B

MATTERS UNDER CONSIDERATION BY THE LAW REFORM COMMISSION OF BRITISH COLUMBIA

1. Debtor-Creditor Relationship Topics
   (a) Interprovincial Enforcement of Judgments
   (b) Execution Against Shares
2. Injurious Reliance
3. Real Property Law Topics
   (a) *Commercial Tenancy Act*
   (b) Joint Project on Land Title Law
4. Structured Compensation for Personal Injury
5. Family Property
6. The Division of Pension Rights on Marriage Breakdown
7. Court Jurisdiction
8. Appeals from Statutory Agencies
9. Vicarious Liability under the *Motor Vehicle Act*
10. The Law Reform Database Project

Appendix C

COMMISSION WORK REVIEWED AND CITED

Following is a partial list of reviews, articles, books, and cases in which the Commission's work has recently been referred to or discussed.

(a) Articles and Reviews

H.C. Alvarez, "The Role of Arbitration in Canada -- New Perspectives," (1987) 21 U.B.C. L. Rev. 247.

G. Bale, "Palm Tree Justice and Testator's Family Maintenance -- The Continuing Saga of Confusion and Uncertainty in the B.C. Courts," (1987) 26 E.T.R. 295.

W.A. Bogart, "Developments in the Canadian Law of Standing," (1984) 3 Civ. J.Q. 339.

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Bowles and Whalen, "Working Paper on Foreign Money Liabilities," (1982) 60 Can. B. Rev. 805.

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P.C. Casey, "Friendly Acquisitions: Investigations and Practical Problems," (1987) Meredith Memorial Lectures 57.

F.M. Catzman, "Law Reform Commission of British Columbia, Bulk Sales Legislation, Working Paper No. 40," (1983) 8 Can. Bus. L.J. 109.

B. Crawford, "The Legal Aspect of Money, 4th ed., by F.A. Mann," (1982-3) 7 Can. Bus. L.J. 368.

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J.K. Maxton, "Execution of Wills: The Formalities Considered," [1982] 1 Canterbury L. Rev. 393.

F. Meisel, "British Columbia Law Reform Commission Report on Arbitration," [1983] Civ. J.Q. 197.

F. Meisel, Note on "Settlement Offers," [1986] Civ. J.Q. 99.

D.S. Moir, "Review: Family Property: A Study Paper prepared for the Law Reform Commission of British Columbia" (1987) 6 Can. J. Fam. L. 145.

M.H. Ogilvie, Review, "Report on Covenants in Restraint of Trade. Law Reform Commission of British Columbia," (1985) 63 Can. B. Rev. 250.

D.A. Potts and C.A. Matthews, "Procedural Concerns in Broadcast Libel," (1988) 10 Adv. Q. 29.

S.A. Rae, "Inflation and the Law of Contracts and Torts," (1982) 14 Ottawa L. Rev. 465.

J. T. Robertson, "Judgment on the Covenant at Order Nisi--A Response to Judicial Opinion, Accepted Practice and the Law Reform Commission of British Columbia," (1987) 21 U.B.C.L. Rev. 1.

S. Schwartz "Review - Law Reform Commission of British Columbia, Report on Illegal Contracts," (1985) 10 Can. Bus. L.J. 83.

L.M. Sherwood, "Contracts - Illegality and Section 305.1 of the Criminal Code," (1983) 61 Can. B. Rev. 866.

M.A. Springman, "Fraudulent Conveyances, Fraudulent Preferences, and Other Voidable Transactions," (1988) L.S.U.C. Special Lectures.

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S.M. Waddams, "Foreign Money Liabilities: Law Reform Commission of British Columbia, Working Paper No. 33," (1981-82) 6 Can. Bus. L.J. 352.

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(b) Cases

Acli Limited v. *Cominco Ltd.*, (1985) 61 B.C.L.R. 177 (B.C.C.A.).

Aktary v. *Dobroslavic*, (1984) 48 B.C.L.R. 26 (B.C.S.C.).

Air Canada v. *A.G.B.C.*, (1983) 41 B.C.L.R. 41 (B.C.S.C.).

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Imperial General Properties Ltd. v. *The Queen*, [1984] 1 F.C.R. 146 (F.C.T.D.).

Johal v. *Harstad*, (1988) 24 B.C.L.R. 61 (B.C.C.A.).

Latchford v. *Farker*, [1984] B.C.D. Civ. 3579-04 (B.C.S.C.).

Lui v. *West Granville Manor Ltd.*, (1987) 20 C.P.C. 166 (B.C.C.A.).

Lynden Transport Inc. v. *R. in Right of B.C.*, (1985) 62 B.C.L.R. 314 (B.C.S.C.).

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Re Palmer; Schonwald v. *Cunningham*, (1985) 22 E.T.R. 8 (B.C.S.C.).

Pearson v. *Manning* [1988] B.C.D. Civ. 1674-06 (C.A.).

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Price v. *Knutson and Lypchuk Estate*, [1987] 4 W.W.R 128 (B.C.C.A.).

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Rutherford Bazett & Co. v. *Penticton Pub Ltd.*, (1983) 50 B.C.L.R. 21, 41 C.P.C. 226, (B.C.S.C.).

Salzburger Sparkasse v. *Total Plastics Service Inc.*, (1988) 27 B.C.L.R. (2d) 333 (B.C.S.C.).

Sehlstrom v. *Pich*, (1983) 36 C.P.C. 79 (B.C.S.C.).

Sur-Del Carpets and Rugs (M.R.) Ltd. v. *Ciprut*, (1985) 64 B.C.L.R. 53 (Co. Ct. Van.).

Appendix D

PAST AND PRESENT MEMBERS OF THE COMMISSION

Hon. E.D. Fulton	Chairman	1970 to 1973
Hon. Mr. Justice F.U. Collier	Commissioner	1970 to 1971
Dr. Richard Gosse	Commissioner	1970 to 1972
Ronald C. Bray	Commissioner	1971 to 1977
	Acting Chairman	1973 to 1974
J. Noel Lyon	Commissioner	1972 to 1973
Allen A. Zysblat	Commissioner	1973 to 1976
Paul D.K. Fraser, Q.C.	Commissioner	1973 to 1979
Peter Fraser, Q.C.	Commissioner	1973 to 1982
	Acting Chairman	1978 to 1979
Leon Getz	Chairman	1974 to 1977
	Commissioner	1974 to 1979
Hon. Mr. Justice J.D. Lambert	Commissioner	1976 to 1978
	Chairman	1978
Kenneth C. Mackenzie	Commissioner	1978 to 1983
Bryan Williams, Q.C.	Commissioner	1979 to 1984
Anthony F. Sheppard	Commissioner	1979 to 1984
Arthur L. Close	Commissioner	1979 to date
	Vice-Chairman	1983 to 1984
	Chairman	1984 to date
Hon. Mr. Justice J.S. Aikins	Chairman	1980 to 1983
Hon. Ronald. I. Cheffins Q.C.	Commissioner	1983 to 1985
	Vice-Chairman	1984 to 1985
		1987 to date
Mary V. Newbury	Commissioner	1984 to date
Lyman R. Robinson, Q.C.	Commissioner	1985 to date
Peter T. Burns, Q.C.	Commissioner	1986 to date

APPENDIX E

MINOR REPORT ON PRACTICE IN RELATION TO THE CANCELLATION OF A CERTIFICATE OF *LIS PENDENS* (LRC 98)

November 18, 1988

Dear Mr. Attorney:

Re: Minor Report on Practice in Relation to the Cancellation of a Certificate of Lis Pendens

A. Introduction

The certificate of *lis pendens* is a familiar instrument. Its issuance is provided for in section 213 of the *Land Title Act*:

> (1) A person who has commenced or is a party to a proceeding, and who is
>
> (a) claiming an estate or interest in land; or
>
> (b) given by another enactment a right of action in respect of land,
>
> may register a certificate of lis pendens against the land in the same manner as a charge is registered,...

The registration of a certificate of *lis pendens* (hereafter CLP) may severely restrict the way in which a person with an interest in the land can deal with it. The CLP has the effect of preserving the status quo during litigation. The owner of property against which a claim is asserted cannot deprive the claimant of the fruits of the litigation by conveying the property to an innocent party.

The serious consequences of a CLP, and the relative ease with which it may be registered against land, make it a matter of concern that the law provide efficient machinery for the removal of a CLP from title in appropriate circumstances. Sections 231 to 237 of the *Land Title Act* are meant to provide that machinery. A CLP may be cancelled where the action is discontinued (s. 232) or dismissed (s. 233) or on the written re-

quest of the party who caused it to be registered (s. 234). Under each of these sections, a CLP may be cancelled on the production of sufficient evidence to the registrar.

There are also two circumstances in which a person may apply to a court for an order cancelling the registration of a CLP. Such an application may be made under section 231 where "no step has been taken in the action for one year." Under section 235, application may be made in cases of "hardship and inconvenience" and the court may order cancellation on sufficient security being given (s. 236). It is these sections which form the focus of this Minor Report. Our formal recommendations concerning various aspects of their operation is set out at the end of this Report. For convenient reference, selected provisions of the *Land Title Act* are appended.

B. The Requirement for a New Proceeding

Sections 231 and 235 both provide that application be made to the court in which the proceeding was commenced. On its face, this direction as to jurisdiction would appear to authorize either of the two different procedural devices by which a claim for relief might be brought before the court. First, it might authorize a wholly new proceeding in which cancellation of the CLP is sought (an originating application brought by petition). Second it would appear to authorize an application for such relief in the same proceeding in which the CLP was issued (an interlocutory application brought by notice of motion). It has been held, however, that the second type of application is *not* sanctioned by the legislation and we understand that this has been the source of some inconvenience and expense.

Matsumoto Shipyards Ltd. v. *Saggu*, (unreported B.C.S.C. Van. Reg. No. C880302, July 29, 1988) is the latest in a series of decisions holding that relief under sections 231 and 235 of the *Land Title Act* is available only in a separate proceeding brought by petition. Until recently, there may have been some theoretical justification for that position. Before 1982, application to the Supreme Court was required in

every case (including those in which the CLP was issued in a County Court proceeding). This may have influenced the view taken in some of the earlier cases which tended toward a strict separation of the original proceeding and the application for relief. The 1982 amendments might have provided the courts with an opportunity to reconsider this procedural issue, but that has not occurred.

To require that the applicant commence a fresh proceeding in every case if he is to obtain relief under section 231 or 235 has little to commend it in terms of policy. First, an application for cancellation of a CLP is inextricably linked with the action in which the CLP was issued. For example, a litigant may frequently wish to couple an application for cancellation with another application in the main proceeding. The connection between the issues raised in the two applications makes it sensible that they be heard at the same time and within the context of a single proceeding.

Even where a petition for cancellation is the only application before the court, it may require that the court canvass the merits of the applicant's claim. For example, in fixing the amount of security for the applicant's claim under section 236, the court may "take into consideration the probability of the party's success." In *Park and Tilford Canada Inc.* v. *Festival Markets Inc.*, (1986) 6 B.C.L.R. (2d) 160, 163 Gibbs J. commented on this link:

> Although the petition [to cancel the CLP] is an originating process in a separate action, it is analogous to an interlocutory application in the Festival group's specific performance action, and it will be so treated.

It might also be observed that the requirement for a separate proceeding imposes an additional financial burden on the defendant which, in the light of recent increases in court registry fees, is no longer trivial.

Where an existing party to a proceeding seeks to have a CLP cancelled, there is no rational reason why legislation

should not allow the matter to be brought before the court by a notice of motion in the original proceeding. The current view taken by the courts serves only to lay a trap for unsuspecting counsel. These thoughts were echoed by a correspondent, a lawyer practising in the interior of the Province, who first drew this problem to our attention:

> With the greatest respect to the learned Judges making those decisions, it is my view that they are completely illogical. Nothing could make more sense than to allow litigants within a proceeding in which a *Lis Pendens* has been filed to file a Motion applying pursuant to the Sections for removal of the *Lis Pendens*.

C. Standing to Apply

Standing to apply for relief varies as between section 231 and section 235. Under section 231, "the party against whose land the *lis pendens* has been registered" may apply for cancellation. This would seem to preclude any other person who has an interest in the land, perhaps as the holder of a charge, from applying for cancellation where that person had not been joined as a party to the proceeding. It seems unacceptably narrow to confine standing in this way.

At first blush, section 235 seems to have resolved, at least in part, this problem. Under that section an application may be made by "a person against whose land a certificate of *lis pendens* has been registered." By substituting "person" for "party" it appears to provide for relatively wide rights of standing. The courts, however, have taken a contrary view and, in the result, standing to apply under section 235 seems to be confined to the registered owner who, in most cases, is a party to the proceeding. Charge holders have no status to apply. See *Re Fedoruk*, (1975) 65 D.L.R. (3d) 368 (B.C.S.C.).

It is our view that both sections should provide quite generous rights of standing.

D. Show Cause Procedure

An application under section 235 is for an order calling on the party who issued the CLP to *show cause* why it should not be cancelled. It is not clear to us why this provision has been framed in this way. The show cause procedure has a distinctly antique flavour and, moreover, is capable of causing mischief. In one case drawn to our attention, a CLP had been issued at the instance of a non-existent company and there was no entity capable of being called upon to "show cause." We understand that in this particular case the judge did not deny the relief sought, but the language of section 235 created some anxious moments for all concerned.

We believe that the show cause procedure should be replaced by a simple application for cancellation on the grounds set out.

E. Security

Where a court, on an application under section 235, is prepared to order cancellation of a CLP the question of security arises. The fixing of security is regulated by section 236. What is the judge to do when the merits of the application clearly suggest that the proper result is to cancel the CLP without security? This might occur, for example, where the pleadings do not disclose any claim to land or where it is patent that its registration is an abuse of process.

At a technical level, the language of section 236 seems to permit the judge to order nominal security or, perhaps, security of $0.00. One can, however, understand a judge having a certain reluctance to do that in the face of legislation which appears to contemplate that valuable security be given by the applicant if the CLP is to be removed. We believe it should be made explicit that a judge may, in an appropriate case, order cancellation of a CLP without ordering that the applicant give security.

F. Recommendations

We recommend that sections 231, 235 and 236 of the *Land Title Act* be amended:

1. To permit an application for relief under sections 231 and 235 to be brought either by interlocutory application in the proceeding in which the CLP was issued or by originating application.

2. To provide that any person who can establish a legal or beneficial interest in the land and who is prejudiced by the continued registration of the CLP has standing to apply for relief under sections 231 and 235.

3. To abandon the "show cause" procedure in section 235 in favour of a simple application to cancel the CLP.

4. To clarify that, under section 236, the court may, in an appropriate case, order cancellation of the CLP without requiring that the applicant provide security.

This letter is to be taken as a Minor Report (No. 98) of the Law Reform Commission recommending a change in the law as herein set out. This recommendation was approved by the Commission at a meeting on November 17, 1988.

Yours sincerely,

Arthur L. Close
Chairman

Annex to LRC 98

Land Title Act

R.S.B.C. 1979, c. 219

Selected Provisions

Registration of lis pendens in same manner as charge

213. (1) A person who has commenced or is a party to a proceeding, and who is

(a) claiming an estate or interest in land; or

(b) given by another enactment a right of action in respect of land,

may register a certificate of *lis pendens* against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced shall attach to his certificate a copy of the originating process, or, in the case of a *lis pendens* under the *Court Order Enforcement Act*, Part 3, a copy of the notice of motion or other document by which the claim is made.

(2) The land affected by the certificate of *lis pendens* shall be described in a manner satisfactory to the registrar.

(3) On registration of a certificate of *lis pendens*, the registrar shall forthwith mail a copy to the owner against whose title the certificate has been registered.

(4) Where, subsequent to the registration of a certificate of *lis pendens*, a change of parties occurs, the registrar,

(a) on receipt of a certificate of a *lis pendens* showing the new party; and

(b) on compliance with this Act,

shall register the certificate of change in the same manner as a modification of a charge.

(5) Notwithstanding subsection (1), where a person entitled to enforce a restrictive covenant or building scheme has commenced an action to enforce it, he may register under this section a *lis pendens* in the prescribed form against land in respect of which a breach is alleged to have occurred.

(6) A party to a proceeding for an order for the dissolution of marriage or judicial separation, or for a declaration that a marriage is null and void, or for a declaratory judgment under Part 3 of the *Family Relations Act* that spouses have no reasonable prospect of reconciliation with each other, may register under this section a certificate of *lis pendens* in the prescribed form in respect of any estate or interest in land the title to which could change as an outcome of the action.

(7) Notwithstanding subsection (1), a person who has commenced an action under the *Wills Variation Act* may register a certificate of *lis pendens* in the prescribed form against the and affected.

(8) A judgment creditor who

(a) has made application under section 9 of the *Fraudulent Preference Act*, and

(b) in the application, claims he is entitled to register the judgment against the land in respect of which the application was made, or against the judgment debtor's or another person's interest in the land,

may register a certificate of *lis pendens* in the prescribed form against the land.

Cancellation of lis pendens

231. (1) Where a certificate of *lis pendens* has been registered and no step has been taken in the action for one year, the party against whose land the *lis pendens* has been registered may apply to the court in which the action was commenced for an order to have the registration cancelled.

(2) The registrar, on application and on production of a certified copy of the order of the court directing cancellation under subsection (1), shall cancel the registration.

Cancellation of lis pendens where action discontinued

232. Where an action in respect of which a certificate of *lis pendens* is registered has been discontinued, the registrar shall cancel the registration, on

(a) application; and

(b) production of a certificate of the registrar of the court that issued the certificate of *lis pendens*, certifying that the action has been discontinued in whole or in part as to the land in respect of which the *lis pendens* is registered.

Cancellation of lis pendens where action dismissed

233. Where an action in respect of which a certificate of *lis pendens* is registered has been dismissed, the registrar shall cancel the registration as provided in the regulations, or, on

(a) application; and

(b) production of a certificate of the registrar of the court that issued the certificate of *lis pendens*, endorsed by the registrar of the Court of Appeal, certifying that

(i) the action has been dismissed and that the time limited for appeal has expired and no notice of an appeal has been filed with him; or

(ii) a notice of appeal has been filed and has been finally disposed of, and the dismissal of the action has not been set aside by the Court of Appeal or the Supreme Court of Canada.

Where action neither dismissed nor discontinued

234. (1) Where an action in respect of which a certificate of *lis pendens* has been registered has neither been discontinued nor dismissed, the registrar, on application, may cancel the registration of a certificate of *lis pendens*, on the written request of the party initiating the proceedings or his solicitor.

(2) The request shall be in a form satisfactory to the registrar, describe the land in respect of which the registration is to be cancelled, and, in the case of a party, witnessed and proved in the manner prescribed by Part 5.

Cancellation of lis pendens on ground of hardship

235. A person against whose land a certificate of *lis pendens* has been registered may, on setting out in an affidavit,

(a) particulars of the registration of the certificate of *lis pendens*;
(b) that hardship and inconvenience are experienced or are likely to be experienced by it; and
(c) the grounds for those statements,

make application to the court in which the proceeding was commenced for an order calling on the party in whose name the certificate of *lis pendens* has been registered to show cause, on sufficient security being given, why the registration should not be cancelled.

Power of court to order cancellation

236. (1) On the hearing of the application referred to in section 235, the court

(a) may order the cancellation of the registration of the certificate of *lis pendens* either in whole or in part, on
  (i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of *lis pendens* has been registered; and
  (ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court; or
(b) may refuse to order the cancellation of the registration, and in that case may order the party
  (i) to enter into an undertaking to abide by any order that the court may make as to damages properly payable to the owner as a result of the registration of the certificate of *lis pendens*; and
  (ii) to give security in an amount satisfactory to the court and conditioned on the fulfilment of the undertaking and compliance with further terms and conditions, if any, the court may consider proper.

(2) The form of the undertaking shall be settled by the registrar of the court.

(3) In fixing the amount of the security to be given, the court may take into consideration the probability of the party's success in the action in respect of which the certificate of *lis pendens* was registered.

Cancellation of registration

237. On

(a) application to the registrar for the registration of an order of cancellation of registration of *lis pendens* under section 236; and

(b) production of the order or a certified copy, and a certificate from the registrar of the court from which the certificate of *lis pendens* was issued certifying that the security required has been given,

the registrar shall cancel the registration of the certificate of *lis pendens* as to the land affected by the order.

APPENDIX F

Law Reform Commission of British Columbia

Response to

Access to Justice: The Report of the Justice Reform Committee, 1988

LRC 101

December 1988

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INTRODUCTION: TWO LAW REFORM BODIES

The Justice Reform Committee[1] was constituted in 1987. Its broadly-stated goal was "to cause the justice system of the Province of British Columbia to be accessible, understandable, relevant and efficient to all those it seeks to serve." More detailed terms of reference stressed a critical examination of the machinery of justice and the procedures and institutions through which it operates.[2]

The Law Reform Commission welcomed the creation of the JRC. We viewed it, not as a competing law reform body, but as one whose functions neatly complemented our own. In this regard, the JRC's terms of reference might be compared with those of the Commission, as set out in section 2 of the Act under which it is constituted:[3]

> The Commission is to take and keep under review all the law of the Province including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....

The general thrust of this passage is a concern with the development and improvement of the substantive law.

While each of the two law reform bodies has particular areas of competence and credibility, no firm line separates them. Nor is it desirable that such a line should exist, given that both are striving toward the same objective. There are, therefore, areas and issues touched on by the Report of the JRC in which the Law Reform Commission also has an interest, either in the form of past Reports, work in hand or future projects. In some cases, the Commission work constitutes a more detailed exploration of one aspect of a matter or policy endorsed by the JRC Report in broader terms. In other cases, the Commission work provides an alternative view or attack on the a problem identified by the JRC. A number of areas were also suggested by the JRC as suitable for examination by the Commission.

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1. Hereafter referred to as the JRC.
2. *See Access to Justice: Report of the Justice Reform Committee, 1988*, iv
3. *Law Reform Commission Act*, R.S.B.C. 1979, c. 225.

This "Response" is intended to focus attention and discussion on these areas of overlapping interest and on the particular topics which have been suggested for examination by the Commission.

FAMILY PROPERTY ISSUES

A. Reform Generally

1. Recommendation 38

Many family law issues received attention in the JRC Report, and particular comment was directed toward the general rules respecting the sharing of family property.[4] After outlining the background to the enactment of the *Family Relations Act*, the Report observed:

> The effect of the *Family Relations Act* on family property is that as a general rule, those things that are 'family assets' are divided equally between the spouses....If the system is working properly, the law evolves in a cautious but thoughtful way to respond to changes in society.
>
> But if the statute is vague or ambiguous..., the law will grow less and less certain. Rather than clarifying the meaning of the statute the case law will muddy the waters. When the law is unclear lawyers cannot advise their clients as to the likely outcome of their case and so they have no basis for making an agreement. Every case could go to trial.
>
> The problem seems to be that the Act dose not contain a statement of the philosophical basis for entitlement to share in family property. Until that statement is clearly made, judges will continue to apply their own ideas as to how marriage affects property rights.

The JRC's analysis echoes the sentiments expressed in the *Study Paper on Family Property* issued by the Law Reform Commission in 1985. The JRC responded to this problem with its Recommendation No. 38:

> The Attorney General of British Columbia, after consultation with the Family Law Section of the British Columbia Branch of the Canadian Bar association and the Law Reform Commission of British Columbia, should revise the Family Relations Act provisions which deal with family property.

4. JRC Report 59

The revision should make a clear statement of the principles on which family property is to be shared by spouses or former spouses.

2. OUR RESPONSE

(a) Family Property Generally

We share the perception of the JRC that there is a need for a re-examination, reform and restatement of the principles on which family property is to be shared on a marriage breakdown. The Commission is engaged on a project on Family Property which involves a thorough review of Part 3 of the *Family Relations Act*, the development of rational principles to determine what property should be subject to sharing and the way it should be shared. The development of draft legislation will be part of this process. The Commission's normal consultation processes involve the appropriate sections of the Canadian Bar Association.

This topic has, in fact, been part of the Commission's program since late in 1987 and our work has advanced to the point where a draft working paper is virtually settled. We expect to begin our consultation processes, which will involve the appropriate sections of the Canadian Bar Association, in 1989. If it would assist the Attorney General in evaluating JRC Recommendation No. 38, we would be pleased to make a copy of the most recent draft of the working paper available.

(b) Spousal Agreements

There is one aspect of the Law Reform Commission's work on family property which is complete. It concerns agreements which spouses have entered into respecting family property. The courts currently have a wide power to vary agreements which they perceive to be "unfair." This jurisdiction is troublesome from a number of points of view. It produces needless litigation. It is inconsistently exercised and creates the same kind of uncertainty the JRC found objectionable in the general law of family property.

In 1986 The Law Reform Commission submitted a *Report on Spousal Agreements* which concluded that the power of the courts to alter consensual distributions of family property is unnecessarily wide. Recommendations were made to rationalize

this jurisdiction and confine it within its proper limits. This is an aspect of family property which lends itself to immediate implementation through legislation if early action on at least part of Recommendation 38 is thought desirable.

B. Pensions

The *Family Relations Act* stipulates that in appropriate circumstances, pension rights are to be regarded as property which is subject to division under the Act. As a statement of general policy this has much to commend it. The Act, however, provides no specific machinery for the enforcement of orders that pensions be divided. The JRC identifies one particular situation in which this hiatus is perceived as creating difficulties. Recommendation 39 is directed at "deferred sharing" situations and suggests that legislation should provide for automatic severance of pension benefits at source.

Late in 1987 the Law Reform Commission added to its program a project on "The Division of Pension Rights on Marriage Breakdown." This project addresses a variety of issues that arise from imposing property concepts on a stream of payments. While our research is still in its preliminary stages, it suggests that caution is called for. First, dealing with a single aspect of pensions, in isolation from other relevant issues, may lead to distortions. Second, the approach taken in Recommendation 39 is not necessarily the only, or the best, solution to the problem at which it is aimed. We suggest that action on Recommendation 39 be deferred until the conclusions of the Law Reform Commission on aspects of pension sharing are available.

C. Enforcement Issues

Recommendations 40 and 41 deal with certain remedies which are, or should be, available in the enforcement of rights to family property. While, technically, these fall within the scope of our general work on Part 3 of the *Family Relations Act* it is unlikely that our conclusions would differ materially from those of the JRC and we endorse early action on them.

PARTICULAR STATUTES REFERRED FOR STUDY

A. Introduction

The JRC indicated that a number of submissions had been made which it felt merited further study. In Recommendation 182 it was suggested:

> The following statutes should be referred to the Law Reform Commission of British columbia for further study: The *Limitation Act*; *Negligence Act*; *Patients Property Act*; *Municipal Act* (60 day notice provision); *Workers Compensation Act*; and the *Insurance Act* (regarding claims for losses for interruption of business).

The reasons given by the JRC for focusing on these particular statutes are set out below.

B. *Limitation Act*

1. Background To The Recommendation

The JRC Report stated:

> The *Limitation Act* should be studied in detail and brought into conformity with the form of legislation which is now being considered in other provinces. Any reform process should review the special limitation periods applied to particular classes of people, such as medical doctors. Any special limitation periods should be fully justified and all similar classes should be treated in the same manner.

2. Our Response

We confess a degree of surprise at the breadth of this suggested reference to the Commission. The limitation laws of the province were, in fact, the subject of intense study by us in the early 1970's which resulted in a major *Report on Limitations* which was submitted in 1974.[5] The recommendations made in that Report were implemented in 1975 by what is now the *Limitation Act*. That reform process also eliminated virtually all the special limitation periods of the kind that appear to be of concern to the JRC.

Particularly puzzling is the suggestion that "the *Limitation Act* should be...brought into conformity with the form of legisla-

5. LRC 15.

tion which is now being considered in other provinces." The fact is that British Columbia has been in the forefront in modernizing its limitation laws, and if any trend is evident it is for other Canadian jurisdictions to bring their legislation closer to ours.[6]

In the 13 years the *Limitation Act* has been in force we have monitored its operation closely and have seen nothing which suggests that a wholesale re-examination and reform is required. If major difficulties were brought to the attention of the JRC, we are anxious to receive particulars of them so we may pursue their correction.

Major difficulties aside, experience under the Act has identified a few discrete areas in which its operation might be improved or clarified.[7] Our present view is that any re-examination of the Act should be a relatively narrow one which is confined to these areas. If it is the Attorney General's wish we would be pleased to undertake this.

C. *Negligence Act*

1. Background To The Recommendation

The JRC Report stated:

> The *Negligence Act* should be studied in the light of the decision of the British Columbia Court of Appeal in *Leischner* v. *West Kootenay*, [1986] 3 W.W.R. 97. That case established that if a plaintiff has been contributorily negligent then the liability of the defendants is several only, and not joint and several.

2. Our Response

This matter, we are pleased to advise, has already been dealt with by the Law Reform Commission. In October 1986 we submitted our *Report on Shared Liability*[8] which addressed the problems created by the *Leischner* case as well as a number of other procedural and substantive issues which may arise when two or more persons share liability to another.

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6. For example, the *Uniform Limitation of Actions Act*, recently promulgated by the Uniform Law Conference of Canada bears a distinct resemblance to our Act in language, structure and approach.
7. For example the operation of s. 8 (ultimate limitation period) under which the medical profession does enjoy special protection.
8. LRC 88.

The Report contained a draft act based on uniform contributory fault legislation promulgated by the Uniform Law Conference of Canada. This is a matter on which early legislative action is possible.

D. *Patients Property Act*

1. Background To The Recommendation

The JRC Report stated:

> Several people recommended that the *Patients Property Act* be amended to recognize the various areas in which a person may be competent or incompetent, such as residential, vocational, social, medical, legal or financial. The Act, it is said, should be amended to allow for a degree of flexibility where the patient is somewhat capable of managing his affairs but does need assistance in some areas. This is a matter that should be looked at.

2. Our Response

The establishment of an appropriate legal framework to secure the rights of those whose competence for various purposes may be impaired has recently been the subject of interest and activity by law reformers in Canada and elsewhere. In the past, consideration has been given to the addition of such a study to our program but, for a variety of reasons, that has not been done.

One impediment has always been that a project of this kind is potentially very large and would call for a commitment of resources the Commission simply does not have. To add it to our program and attempt to give it any kind of priority, without additional resources, would mean that other, equally worthy, projects would have to be abandoned or allowed to languish.

A second concern has been that the Commission, which is composed solely of lawyers, may not be the best body to develop credible recommendations in this area. We note that in other jurisdictions when these matters are brought under study, the tendency is to constitute a broadly based group with significant representation from the health and social work disciplines.[9]

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9. For example The Advisory Committee on Substitute Decision Making for Mentally Incapable Persons (Fram Committee, Ontario) whose Report was recently released.

In the past the Commission's involvement in this area has been directed at the examination of relatively discrete issues such as those addressed in our *Report on Powers of Attorney and Mental Incapacity*.[10] It is our perception that we can make our most useful contribution in this way.

E. *Municipal Act*

1. Background To The Recommendation

The JRC Report stated:

> The suggestion was made to the Committee that the 60-day notice provision in the *Municipal Act* should be repealed. This is the section that requires a person to give notice to a municipality within 60 days of an injury or lose the right to bring a lawsuit against the municipality.

2. Our Response

Reference was made above to the Commission's 1974 *Report on Limitations*. In that Report, the Commission considered the notice provision contained in the *Municipal Act*, and a similar provision contained in the *Vancouver Charter*. It recommended that both provisions be repealed.[11] This recommendation appears to have been accepted, initially, by the Government in 1975 since the first reading version of the *Limitation Act* contained a provision repealing them. At some stage of the legislative process the repeal provision was lost. The two notice provisions remain on the statute book and, as the Report of the JRC attests, continue to be a source of complaint.

The conclusions set out in the 1974 *Report on Limitations* respecting these notice provisions retain their force as formal recommendations of the Commission. If it is the Attorney General's wish that they be re-examined, we would be pleased to do so.

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10. LRC 22, implemented in R.S.B.C. 1979, c. 334, s. 7. A re-examination of the "enduring power of attorney" is being considered as a future Commission project.
11. LRC 15 at 116.

F. *Workers Compensation Act*

1. Background To The Recommendation

The JRC Report stated:

> The *Workers Compensation Act* was also the subject of comment. The Committee heard recommendations that the Boards of Review system be abandoned in favour of a review by a Superior Court Judge. Also, it was said that the court should be given authority to review decisions under the Act to deal with obvious injustices.

2. Our Response

The *Workers Compensation Act* and its operation, as a potential Law Reform Commission project, is something we would approach cautiously. The reason for this caution has been described in identifying the criteria that should be applied in determining whether a particular topic is suitable for examination and report by the Commission. In successive annual reports we have said:[12]

> Many issues brought to the Commission's attention do not turn on defects in the substantive law. Rather, the defects are in matters of administration and the institutions through which the law is applied. While there is no hard and fast position on this, the Commission tends to be cautious in approaching topics which appear to call for altered institutional arrangements rather than "self-executing" changes in black letter law.

While we would, of course, respect any reference of this topic made to the Commission for study and report, we do question whether the Law Reform Commission is the appropriate body to undertake such a task if it is thought necessary.[13]

G. *Insurance Act*

1. Background To The Recommendation

The JRC Report stated:

> The *Insurance Act*, it was recommended, should be amended to allow the Appraisal Act to apply to claims for losses due to interruption of business.

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12. *Annual Report 1987/88*, 4 (LRC 95)
13. We understand, moreover, that a Report on this topic was recently submitted to Government by D.R. Munroe Q.C. and the concerns referred to in the JRC Report may now be overtaken by events.

2. Our Response

This is not a matter on which we can comment without more complete information about the concerns raised and the exact nature of the problem to be addressed. We are in the process of acquiring that information.[14]

A NEW *APPEALS PROCEDURE ACT*

A. Recommendation 114

In its Report, the JRC described the variety of procedures provided for in the provincial statutes through which the decision of a government agency or tribunal can be appealed to a court. These procedures tend to vary from statute to statute in ways which to not appear to serve any useful purpose. The range of issues which may be raised on appeal is frequently unclear. The JRC observed:

> There need only be two distinct appeal procedures; a new trial, or a review on a point of law. There should be an *Appeals Procedure Act* that would clearly set out the procedures to be followed on each of these. There may well be room for variations within these two models, to accommodate particular circumstances but any appeal to a Court should be able to fit within one of the two.

These views formed the background to Recommendation 114:

> A new *Appeals Procedure Act* should define two distinct appeal processes: a new trial or a review on a question of law.
>
> Each statute that provides for an appeal to a Court should either clearly define the appeal procedure or refer to the *Appeals Procedure Act* and designate which of the two procedures applies.

B. Our Response

We are in substantial agreement with the views of the JRC on the need for reform and the development of a new *Appeals Procedure Act*. Our own perception of this need led us to add a project on administrative appeals to the Commission's program in July 1988 and preliminary work has commenced. The JRC's blueprint for legislation may ultimately commend itself to us

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14. Some confusion arises out of the fact that there is no provincial statute called the "Appraisal Act" which might be made applicable.

but, in our own project, other approaches to reform would also be explored. One strategy under consideration would achieve substantially uniform appeal procedures without requiring amendments to the numerous individual statutes which authorize appeals.

COURT ORDER INTEREST ACT

A. Recommendation 177

The JRC Report pointed out that the rate of interest on judgments is set by a federal Act and is fixed at an uneconomically low rate. The repeal of this Act would clear the way for the operation of provincial legislation which fixes the rate at a more reasonable level. This legislation was enacted in 1982 and it will come into force automatically when the federal Act ceases to apply. The JRC recommended:

> The Federal Government should be urged to promptly repeal the sections of the *Interest Act (Canada)* so that the *Court Order Interest Act, 1982* may be proclaimed.

B. Our Response

We agree that the withdrawal of the federal government from this field is highly desirable. The regulation of judgment interest should be a matter solely for the province. We believe, however that a better regime exists to define rights to both prejudgment and postjudgment interest than is to be found in the *Court Order Interest Act* (as amended). This regime was described in detail in our *Report on the Court Order Interest Act*[15] which was submitted in 1987. We urge that legislation based on the recommendations made in that Report should be in place to provide for judgment interest when the federal interest legislation ceases to apply.

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15. LRC 90.

STRUCTURED COMPENSATION

A. Recommendation 180

The JRC commented on the disadvantages which can flow from a "lump sum" award of damages to a plaintiff who has suffered catastrophic personal injuries. It also noted, with apparent approval, the increasing use of the "structured settlement" in which the parties agree on compensation in the form of an income stream to the injured person. The JRC recommended:

> The *Supreme Court Act*, s. 42 should be amended to clearly give a judge the authority to order an award of damages to be satisfied by a structured settlement.

B. Our Response

Late in 1987 a project on structured compensation (periodic payments) was restored to the Commission's program. This was in response to the same kinds of concerns which motivated the JRC in making Recommendation 180. The Commission's work is still in its early stages and we are unable to predict, at this time, the way in which it will unfold. We see considerable merit in proceeding with the implementation of Recommendation 180 and believe that experience under it might provide valuable guidance to the Commission.

There is, however, one aspect of the recommendation we believe calls for clarification. In order to exercise the authority referred to in it, must all parties have agreed that compensation be in structured form? Or may a judge compel an unwilling plaintiff to accept structured compensation when he would prefer a conventional "lump sum" award? In describing the compensation mechanism as a "settlement," the recommendation seems to suggest that a consensual element exists, but this is not clear beyond doubt.

ENCOURAGING SETTLEMENT

Recommendations 107 and 108 centred on improving the operation of certain procedures designed to facilitate a settlement between the parties to a lawsuit. These procedures are the

settlement conference and the mini-trial. The Rules of Court also provide for another incentive to negotiate reasonably in order to promote settlement. Rule 57 formalizes the process by which an offer of settlement may be made and provides a costs sanction for unreasonably declining to accept it. Our *Report on Settlement Offers* considered this aspect of Rule 57 and set out a number of recommendations to rationalize it and make it more effective. Any legislative initiatives which concern settlement should also include these recommendations.

PLAIN LANGUAGE

The JRC endorsed the bundle of concepts which have come to be known as the "plain language movement." An important aspect of this is the production of legislation which is clear and easily understood. The Law Reform Commission's mandate to attend to the "simplification and modernization of the law" frequently causes us to consider provincial statutes which do not meet these standards. Such a statute may be based on legislation which is literally hundreds of years old and retains the concepts, structure and much of the language of the period in which it was enacted. A statute like this is unintelligible to everyone -- the ordinary reader and the lawyer alike.

The task of the law reformer assumes an added dimension when a wholly archaic statute is encountered. To the extent that its substantive effect is to be retained, it is necessary to translate and restate that effect in language which makes it accessible to the modern reader. The Commission has done this on numerous occasions and the results, when implemented, have been highly satisfactory. There remain two Reports which have an extremely high "restatement" component and whose implementation might be justified on plain language grounds alone, apart from other reform considerations. Those Reports are:

Report on Fraudulent Conveyances and Preferences (LRC 94)

Report on Co-ownership of Land (LRC 100)

The Commission also has work in hand which will result in a restatement, in part, of the *Commercial Tenancy Act* in modern language.

CONCLUSION

In this response we have identified a number of past Reports of the Law Reform Commission which should be considered as part of any legislative initiative to implement the recommendations of the JRC. Some of these Reports put forward reforms which are within the letter of the JRC recommendations, and all are within their spirit. Those Reports are:

Shared Liability (LRC 88)

Spousal Agreements (LRC 87)

Settlement Offers (LRC 77)

The Court Order Interest Act (LRC 90)

Fraudulent Conveyances and Preferences (LRC 94)

Co-ownership of Land (LRC 100)

Limitations -- General (LRC 15)
[notice provisions in *Municipal Act*]

A number of the recommendations of the JRC touch on areas of past, current or future interest to the Law Reform Commission. For the most part a good fit has been achieved. We would welcome the opportunity to discuss those areas where we have expressed concern respecting the impact of particular recommendations on the Commission's program.

December 16, 1988

APPENDIX G

THE LAW REFORM DATABASE

Background

For many years the Law Reform Commission of British Columbia has had a special interest in improving access to law reform materials. Access to the reports and studies done by law reform agencies, and other bodies performing a similar function, is important to those working directly in this area. It enables them to ascertain readily whether similar work has been undertaken elsewhere and the directions in which it has led. Access is also important to the legal profession generally. Increasingly, law reform materials form a coherent body of legal literature which provides a unique window on many areas of the law.

An important step forward in the access to a particular portion of these materials was taken by the Australian Law Reform Commission which compiled and published a Law Reform Digest. This digest constitutes a virtually complete reference to all law reform activity in Australia, New Zealand and Papua New Guinea from 1916 to 1980. The obvious utility of the Australian digest led the Law Reform Conference of Canada to consider the creation of a Canadian version of the digest.

The Law Reform Conference agreed that the creation and publication of a digest of Canadian law reform activity was a project to be encouraged, and requested the Law Reform Commission of British Columbia to attempt to find a sponsor for and to generate interest in it. We did so from 1986 to 1988, with inconclusive results.

These developments (or lack thereof) led us to reconsider whether a new project, with similar aims, might be defined which could be undertaken substantially "in-house." It was concluded that this was possible and this led to the work on the Law Reform Database described below.

The Database

1. General

Creation of the database started in the summer of 1988. The database is being created with a readily-available software package called "Q&A." The database is divided into a number of "records," each of which relates to a single law reform publication such as a report, consultative document, or research paper. Each record contains a number of "fields" which identify the document and the agency which published it. Other important fields contain keywords that describe the contents of the document. A field is also being reserved for an abstract of the document to which the record relates.

2. What is a Law Reform Document?

The database project is taking a broad view of what constitutes law reform and its documents. In addition to the law reform agencies in Canada, the United Kingdom, Australia and elsewhere in the Commonwealth, the database is picking up the work of the law reform agencies in New York and California and of the Uniform Law Conference of Canada. The database will also include the Reports of selected commissions of inquiry in Canada and England. The first phase of creating the database is now complete and it contains records which describe over 3000 law reform documents.

3. Phase 2: Refining the Keyword Fields

The one part of building the database which involves a subjective element is choosing a group of keywords that adequately describe the subject matter of the document. This raises a number of questions. The proper way in which a legal concept or problem should be characterized is a matter on which views may properly differ. Should the database adopt a particular structure or scheme respecting the characterization and classification of legal information and concepts, or should it use whatever characterization the document adopts, even if that leads to inconsistency from record to record?

Even where there is agreement respecting the proper characterization of a legal concept, there may still be disagreement over the vocabulary which should be used to describe it. A number of possible terms may be available. If they bear a hierarchical relationship to each other, should the keywords selected tend toward generality or specificity? When are words synonyms and when are there subtle shadings of meaning -- for example "minor," "infant," "youth," "young person" and "child"? Where the words are simply synonyms, should several be included as keywords?

During the first phase of building the database these problems were simply ignored. Keywords were derived from document titles, executive summaries and the like, but no attempt was made to achieve consistency of characterization or vocabulary.

In the second phase we have been forced to confront these issues. Our response has been to create a second keyword field. This field will employ a highly structured system of characterization and a controlled vocabulary. This approach will permit the database to be used in the creation of specialized and comprehensive bibliographies and similar aids. The original keyword field will be retained as a "free form" description of the contents of the document to which it relates although some attempt will be made to achieve consistency among documents which concern the same subject matter.

4. Using the Database

The database was designed to be used as a tool to enable researchers to ascertain what work had been done, touching on what areas, and by what bodies. The database can be searched, using character strings or keywords, with restrictions on multiple fields. If a user wishes to retrieve all reports published by law reform agencies in Australia since 1982, which have both "minor" and "contract" in the freeform keyword field, a search specification can be formulated which will identify them.

Other Participants

1. University of Saskatchewan

A significant contribution to the work described above is being made by the University of Saskatchewan through the participation of Marianne Reid. Ms. Reid is a professional librarian with the University and her special area of expertise is the cataloguing of legal materials. Ms. Reid is on sabbatical leave during 1989 and is devoting a major portion of it to the database project. Through special arrangements with the University, work on the database and its use in generating a law reform bibliography will go toward the satisfaction of the terms on which the sabbatical has been granted. Additional financial support for Ms. Reid's participation is being provided by the Law Reform Commissions of Canada, Ontario and British Columbia and the Alberta Law Reform Institute.

Ms. Reid's skills are being employed mainly in the process described above as "refining the keyword fields" and in developing certain technical information for the database.

2. The Law Reform Commission of Saskatchewan

Ms. Reid's work, described above, is being conducted principally in Saskatoon. The Law Reform Commission of Saskatchewan is providing a working environment for her and have put their library and collection of law reform materials at her disposal.

3. The Alberta Law Reform Institute

Reference was made above to a field having been "reserved" for an abstract of the document to which the record relates. The Law Reform Commission of British Columbia is not actively abstracting the law reform documents being entered into the database. The Alberta Law Reform Institute has expressed an interest in the addition of entries to the database and in investigating whether it is possible to add an abstract-oriented component to the database with respect to Canadian law reform materials. Preliminary discussions between representatives of the two agencies suggest that it would be both possible and desirable to

work closely together so as to produce a single database which reflects the contributions of both agencies. A copy of the database, in an interim form, has been made available to the Alberta Institute so it may investigate the addition of abstracts.

The Future

1. Spin-offs

While the database will be a useful research tool in itself, it will also be capable of being used to create a variety of hard-copy research aids. Among these are something resembling a "Canadian Law Reform Digest" of the kind discussed at past meetings of the Law Reform Conference of Canada.

2. Making the Database Available to a Wider User Group

The database is being developed for use on PC compatible office computers, with hard disk, running MS-DOS. The database can be transported from machine to machine on floppy disk. A present difficulty is that the user must also have the Q&A software package to access the database to maximum advantage. Ways and means of overcoming this barrier are being explored. One possibility is to identify or develop a non-proprietary software package to be used for access purposes which can be distributed with the database itself.

If there is a significant demand for access to the database outside the law reform community it will be necessary to consider other channels of distribution to meet it. One possible solution is to enter into an arrangement with one of the commercial systems to put the database "on-line."